IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.712 OF 2005
IN
NOTICE OF MOTION NO.1556 OF 2004
IN
SUIT NO.1572 OF 2004

Vinay Asharam Rathi Appellant
vs.
1(a) Mr.Narendra Balubhai Panchal & ors. Respondents

Mr.Uday Warunjikar with Mr.A.K.Saxena i/b. Mr.Vinay Rathi for the appellant.

Mr.D.A.Barot for the respondents 1(a) to 1(c).

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 21st November 2005

P.C.

Heard Mr.Uday Warunjikar, the learned counsel for the appellant.

2. The appellant is the original plaintiff and his Suit is founded on the oral agreement. According to the plaintiff, the consideration for sale of the subject property was Rs.3,50,000/- and an amount of Rs.50,000/- towards earnest money was paid to the defendant. The learned counsel for the appellant-plaintiff admitted before us that there was no agreement between the parties as to on what date the entire consideration was to be paid and sale transaction was to be completed. It appears from the available material (particularly the document on pages 102-103) that the consideration was

not Rs.3,50,000/- but was Rs.7,51,000/-. There appears to be serious dispute about the actual consideration for the contract. There is no time prescribed for payment of consideration and for completion of transaction. In the circumstances, the learned motion Judge cannot be said to have erred in holding that no prima facie case is made out by the plaintiff. Dismissal of motion does not call for any interference.

3. Appeal is is dismissed in limine.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)